

system without first broaching the Union about this matter) in the circumstances of this case do not warrant a finding that thereby Respondent unlawfully refused to bargain with the Union.

The negotiations with the union steward and the employees after the vote to oust the Union was not a refusal to bargain with the Union unless Respondent is responsible for the vote to oust the Union and this was Respondent's means of avoiding its responsibility to the Union. As noted above, the Trial Examiner believes Respondent gave considerable impetus to this vote but the Trial Examiner believes this impetus insufficient to warrant a finding that thereby Respondent violated Section 8 (a) (5) of the Act insofar as the Union is concerned.

This record reveals very little about the meeting with the employees in January or February 1955. From the evidence available it appears this meeting was, for the most part, a meeting where minor grievances were aired and was not the type of meeting generally considered a negotiation meeting. While Respondent would have been more prudent not to have engaged in such conduct while the RD case was pending, the Trial Examiner believes such conduct insufficient, under the circumstances, to warrant a finding of violation of the Act thereby.

In view of the foregoing, the Trial Examiner recommends that all allegations of the complaint that Respondent engaged in unfair labor practices, except those alleging interference with the formation of the committee and alleging assistance and support to the committee, be dismissed.

ULTIMATE FINDINGS AND CONCLUSIONS

In summary, the Trial Examiner finds and concludes:

1. The Multi-Color Company is engaged in commerce within the meaning of the Act.
2. Truck Drivers Local Union No. 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and the Employees Committee of The Multi-Color Company are labor organizations within the meaning of the Act.
3. All of Respondent's drivers, foot and bicycle messengers, and trimmer shippers, excluding office employees and clerical employees, confidential employees, professional employees, guards, and supervisors as defined in the Act, employed at Respondent's places of business in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.
4. For many months prior to November 1954 the Union was the representative for the purposes of collective bargaining of a majority of the employees in the unit specified in this report.
5. By the activities outlined in this report, Respondent interfered with the formation of the Employees Committee of The Multi-Color Company and gave it assistance and support in violation of Section 8 (a) (2) and (1) of the Act.
6. The aforesaid unfair labor practices occurring in connection with the operation of Respondent's business, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.
7. The evidence adduced does not establish that Respondent dominated the aforementioned committee.
8. The evidence adduced does not establish that Respondent refused to bargain with the Union in violation of Section 8 (a) (5) and (1) of the Act.

[Recommendations omitted from publication.]

The Ohio Aviation Company and District Lodge No. 13, International Association of Machinists, A. F. L. Case No. 9-CA-830.
November 16, 1955

DECISION AND ORDER

On April 26, 1955, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled proceeding, finding that the Re-

spondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and, for the reasons set forth herein, finds that the record fails to support the Trial Examiner's conclusion that the Respondent violated Section 8 (a) (1) and (3) of the Act.¹

1. We do not agree with the Trial Examiner that the Respondent, through the statements of its supervisory employees, interfered with, restrained, and coerced employees within the meaning of Section 8 (a) (1) of the Act. As separately discussed below, these statements, when viewed, as they must be, in the context and circumstances in which they were made, did not contain any threats or other coercive implications to employees for exercising their self-organizational rights but, on the contrary, amounted to privileged expressions of opinion. Thus, in disagreement with the Trial Examiner, we find that the following statements were not, in the circumstances of this case, violative of the Act.

(a) Service Manager Hale's remark at a meeting of employees that it looked "like we are going to have a union shoved down our throats, whether we want it or not" and his designation of employee McMahon as the "instigator" of union activities.

As shown in the Intermediate Report, these remarks were made after Hale advised the employees that the Respondent would not stop them from selecting a union if they wanted one; that the Respondent was impartial; and that they should consider both sides of the argument before making a decision. In addition, Hale's characterization of McMahon as an instigator was made when, upon being questioned by an employee at the meeting as to what benefits could be expected if the Union got in, Hale replied that as McMahon was the instigator of the Union, he was more qualified to answer the question. McMahon thereupon stated that he could not answer the question because "it would all have to be worked out later." In our opinion, Hale's foregoing remarks were innocuous expressions of opinion.

(b) Assistant Service Manager Groff's alleged statement to employees Blalack and McMahon to the effect that union activities were going to hurt a lot of people.

¹ Member Murdock, however, is of the opinion that the Trial Examiner's findings are supported by the record evidence. He would, therefore, sustain the Trial Examiner's findings in their entirety.

The evidence discloses, as the Trial Examiner found, that at the time of the incidents here involved, the Respondent was experiencing a decline in business resulting in a series of layoffs.² Because of this insecurity, employees Blalack and McMahon and another employee interested the Union in organizing the plant. Against this background, it is clear that in the conversation between Groff and Blalack and McMahon, in which the remark in question was allegedly made, seniority in connection with layoffs was one of the subjects discussed. According to Blalack's credited testimony, Groff stated that if the Union got in, "it was going to hurt a lot of people" and that he (Blalack) replied that "a lot of people had already been hurt by being laid off without regard to *seniority*." [Emphasis supplied.] In these circumstances, it appears to us that Groff's remarks were intended to, and did, convey the idea that, if the Union were the recognized bargaining representative, seniority in layoffs would control and that a number of employees would thereby be adversely affected. Such statements obviously do not contain any threat of reprisal prohibited by the Act.

(c) Respondent's instructions to McMahon to stay away from the premises and orders given to stockroom clerks not to sell McMahon goods at discount because he was no longer employed by the Respondent.

The record discloses that approximately 2 weeks after McMahon had voluntarily resigned from the Respondent's employ, on April 9, 1954, he returned to its premises, as McMahon phrased it, "just [to] look around" and "visit." While on the premises he encountered Service Manager Hale who requested him to leave. About 2 months thereafter, McMahon, in connection with some work he was performing for another aircraft company on the field, returned to purchase some parts from the Respondent's storeroom. On this occasion, the Respondent's general manager, Farrell, observed him standing at the stockroom window and inquired as to what he was doing on the premises. McMahon replied that he was there on business to pick up some material that had been ordered for him. Thereupon Farrell told him to leave. When McMahon protested that he was there on business, Farrell told him to go back and tell the party who had ordered the material to come after it. In view of the foregoing, we find that the Respondent was acting entirely within its prerogative in requesting McMahon, a former employee, to leave its property and instructing its stockroom clerks not to sell McMahon goods at a discount.

(d) Parts Manager Luciano's statement to customers at the stockroom window within the hearing of two employees that, if he had his way, he would discharge anyone who voted for the Union.

² The first layoff occurred about March 12, 1954, which was about 2 weeks before the conversation involved herein.

The evidence discloses that during the course of a conversation with two customers Luciano was asked his opinion about the union campaign. Luciano admittedly replied, "If I had my way, I would fire anyone who voted for the union." [Emphasis supplied.] This conversation took place within earshot of two stockroom employees. While under other circumstances such a statement could be construed to be violative of the Act, the particular facts of this case warrant a contrary result. It is undisputed that the Respondent had advised its employees of their statutory right to join the Union. Indeed, it had permitted its employees to engage in union organizational activities on its premises. In these circumstances, Luciano's prefatory remark that if he had his way, plainly indicated that he lacked the power to discharge employees for voting for the Union, particularly since such discharge would be contrary to the Respondent's policy.³ We therefore find that, under the special facts in this case, Luciano's remark was merely an expression of his own personal opinion incapable of fulfillment.

(e) Luciano's suggestion to employee Mick concerning the disposition Mick could make of his union committeeman's badge.

It is obvious from the evidence that this was a gratuitous remark made in jest without any accompanying threats or intention that it be taken seriously and therefore was not violative of the Act.

(f) Foreman Mitchell's statement to Mick that if the Union came in he would leave his job.

We are unable to see how this statement can conceivably be regarded as interference with, restraint, or coercion of employees in the exercise of their self-organizational rights.⁴

2. We also do not agree with the Trial Examiner that the preponderance of the evidence establishes that the Respondent, in violation of 8 (a) (3) and (1) of the Act, discharged employee Blalack for union activities rather than for unsatisfactory work, as the Respondent contends. It appears that Blalack in the course of his duties on one occasion failed to fasten securely an engine cowling of an airplane, and on another occasion had misapplied parkerlube to an oxygen system of an airplane.⁵ The latter incident immediately precipitated his discharge. It is also clear that these errors created a dangerous condition in the airplane. In these circumstances, and in view of the absence of any other unfair labor practices committed by the Respondent, we find that, although the evidence is not entirely free from doubt, the record does not establish that the Respondent was motivated by

³ It is noted that the Respondent had also instructed its foremen that they were not to express any opinions either for or against the Union.

⁴ *Atlanta Metallic Casket Co.*, 75 NLRB 208.

⁵ Blalack subsequently corrected the parkerlube situation.

discriminatory considerations in discharging Blalack, rather than by permissible concern over the careless nature of his work.

Accordingly, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

MEMBER PETERSON took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding authorized by Section 10 (b) of the National Labor Relations Act, 61 Stat. 136, as amended, 29 USC, Supp. 5, Section 141, *et seq.*, herein called the Act, is based upon a charge filed on July 23, 1954, by District Lodge No. 13, International Association of Machinists, A. F. L., herein called the Union, against The Ohio Aviation Company, Vandalia, Ohio, herein called Respondent. On or about December 1, 1954, the General Counsel of the National Labor Relations Board, separately designated as General Counsel and the Board, issued a complaint alleging that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, and affecting commerce within the meaning of Section 2 (6) and (7) of the Act. Copies of the charge, the complaint, and other pertinent processes were duly served upon Respondent, who in due course filed an answer admitting that it is engaged in commerce, but denying all allegations of unfair labor practices.

With respect to unfair labor practices, the complaint alleges in substance that Respondent (1) interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by threats of discharge, changes in working conditions, and other reprisals, and (2) discriminatorily discharged and refused to reinstate Harold Blalack (employee) because of his membership in and concerted activities on behalf of the Union. To the contrary, Respondent affirmatively avers in its answer that it discharged Blalack for negligence and inefficiency in the performance of his duties as an employee.

Pursuant to notice, a hearing was conducted at Dayton, Ohio, on March 1 and 2, 1955, before the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues involved. At the close of the hearing, all parties were authorized to file written briefs and/or proposed findings and conclusions with the Trial Examiner. Oral argument was waived. Written briefs thereafter filed by counsel for the General Counsel and the Respondent have been given due consideration.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT

The Ohio Aviation Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, maintaining its principal office and place of business at Vandalia, Ohio, where it is engaged in the manufacture, sale, service, maintenance, and distribution of aircraft and aircraft parts. Its manufacturing operations consist primarily of the conversion of airplanes from one functional type to another. In the course and conduct of its business during the year 1954, Respondent sold, shipped, and delivered products valued in excess of \$100,000 from its plant at Vandalia, Ohio, to persons, firms, and corporations located outside the State of Ohio, and during the same period purchased and transported substantial quantities of materials, supplies, and equipment to its said plant from other States. It is admitted, and I find, that Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 13, International Association of Machinists, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act, admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The plant organization*

Operations of the Respondent are conducted in hangars at the Municipal Airport, Vandalia, Ohio, under the overall supervision and control of Joseph E. Farrell, vice president and general manager. At all times pertinent to this case, Respondent's business organization consisted of an office department under the supervision of Frank F. Schrage, treasurer; a service department under the supervision of Jack W. Hale, vice president in charge of production and service manager, and Charles T. Groff, assistant service manager; a parts department under the supervision of Alexander J. Luciano, Jr., parts manager; and an aircraft sales department under the supervision of Dan Stanley. The service department was divided into a hangar service crew under Foreman James Speer, two conversion crews under Foreman James Robert Mitchell and Foreman Robert Coleman, respectively, an engine overhaul crew, and a radio crew. James Paul was classified as electrical foreman. Respondent employed approximately 50 men including, in the service department, Harold R. Blalack, John B. McMahon, Earl F. Mick, Bonnie Fuson, John Dunkle, Leon Rhodes, and Lee Young; and in the stockroom of the parts department John O. Abney, James Morrison, Joe Weisner, and Wilbur Werling.

B. *Interference, restraint, and coercion*

By reason of declining business, Respondent initiated a series of layoffs beginning in March 1954. Concerned about their job security, certain employees engaged in concerted activities to form a labor organization. Harold R. Blalack conferred with a representative of the International Association of Machinists, obtained membership application cards, and in concert with John B. McMahon and Bonnie Fuson solicited employees of Respondent to join the Union. On or about March 24, 1954, Representative Harold Benedict addressed a letter to Respondent requesting that the Union be recognized as bargaining representative, and thereafter filed a petition with the National Labor Relations Board for an election. Thereupon, Service Manager Jack W. Hale called a meeting of employees, and made to them a prepared statement, as follows:

The Company has received notice from the IAM regarding your desire for representation. We have called this meeting to tell you this fact, and also advise you that if you want a union the Company will not in any way try to stop you. The Company is impartial as to your wishes in this matter. While the Company is not objecting in any way to your activities, I think it would be wise for all of you to remember one thing. We do not sell a product. Our only sale is in service. Our only sale in the service department is the labor. This I think you should consider very strongly. We have no more to say on the matter, except to advise you to consider both sides of the argument before making a decision.

In addition to his prepared statement, Hale remarked that "it looks like we are going to have a union shoved down our throats, whether we want it or not"; and when questioned concerning benefits to be expected from a union asserted that Mr. McMahon was the instigator of this, and could probably answer that better than he could.

Apprehending that Respondent might retaliate against other employees by reason of the organizational activities, Blalack and McMahon approached Assistant Service Manager Charles T. Groff on or about March 26, 1954, and told him that they and Bonnie Fuson were solely responsible for the organizational activities, that the men wanted a union, and that they were trying to get one in the plant. Groff expressed disapproval of the sneaking manner they had engaged in such activities without consulting Respondent about it and voiced the opinion that it would hurt a lot of people. Shortly thereafter Bonnie Fuson was laid off, and about 1 week later at a meeting in General Manager Farrell's office Blalack and McMahon accused Respondent of terminating Fuson on account of his union activities.

After this meeting, Harold R. Blalack, John B. McMahon, Earl F. Mick, and John Dunkle were appointed as a committee to represent the Union. Thereafter in the plant they wore a badge on their coveralls entitled "IAM Committeeman." Foreman James R. Mitchell admitted that he approached Earl F. Mick while at work, inquired whether he was one of these union guys, and asserted that if the Union came in he would leave his job. Mick in turn asserted that he would quit if the Union did not come in. Parts Manager Alexander J. Luciano, Jr., also approached Mick at or near the Coca-Cola vending machine, and remarked "Oh, you are one

of those committeemen too." Luciano reached out to take hold of his badge, and told Mick to take that badge and shove it up McMahon. Mick voluntarily left the employment of Respondent on May 12, 1954. Luciano admitted that he also made a statement to customers at the stockroom window in the presence of his employees John O. Abney and Wilbur Werling, that "if I had my way I would fire anyone who voted for the Union."

John B. McMahon voluntarily left the employment of Respondent on or about April 9, 1954, but thereafter returned to its premises several times to make purchases at the stockroom. On one occasion when he purchased a spool of thread from John O. Abney (stockroom employee), Parts Manager Luciano and Treasurer Schrage instructed Abney not to sell McMahon anything at a discount, because he was no longer employed by Respondent. On another occasion Service Manager Hale requested McMahon to leave the hangar because he did not want him around there. At another time General Manager Farrell saw McMahon at the stockroom and told him that he had caused enough trouble and they did not want him on company premises any more.

Throughout the spring of 1954 operations of Respondent were gradually curtailed, and its personnel was reduced considerably by successive layoffs. At the election of July 7, 1954, Harold R. Blalack acted as an observer for the Union, and as a result of the balloting the Union was defeated. General Manager Joseph E. Farrell credibly testified that Respondent was fully aware of the organizational campaign including the activities of Blalack, McMahon, Fuson, Mick, and others, and that on several occasions he instructed all of the supervisors to remain absolutely neutral—that he had no knowledge of the statements attributed to and now admitted in part by Parts Manager Luciano and Foreman Mitchell.

C. Discharge of Harold R. Blalack

Service Manager Jack W. Hale hired Harold R. Blalack in the classification of a mechanic helper on June 4, 1952, and he continued in the employment of Respondent until discharged on July 15, 1954. Prior to this employment Blalack attended Embry Riddle School of Aviation in Miami, Florida, for a period of several months, but did not complete his course of instruction. While attending school he also worked for U. S. Airlines, an unscheduled air freight carrier, for a period of 6 or 8 months. While in Florida he was a member of the International Association of Machinists, A. F. L. He started work for Respondent at a wage of \$1.45 per hour, received a wage increase of 5 cents per hour about 1 month later, and in 1953 was granted an additional general increase in wages of 15 cents per hour along with other employees. Respondent promised him an additional increase of 10 cents per hour whenever he obtained an aircraft and engine license from the Civil Aeronautics Authority. In support of his application for a license from CAA, the Respondent on May 25, 1954, by J. W. Hale, vice president, furnished a certificate, as follows:

To whom it may concern:

Mr. Harold R. Blalack has been employed by The Ohio Aviation Company since June 4, 1952. He is presently employed as an aircraft engine mechanic, and his duties in his present position include maintenance, overhaul, and major repair of medium and heavy aircraft. Mr. Blalack has been working under the supervision of several qualified mechanics.

Thereupon, Blalack stood a practical examination before an examiner of the CAA, and received an engine rating as a mechanic. On or about the same date, Foreman James R. Mitchell assigned Blalack to work on an airplane of the Ohio Oil Company—Job No. 8108, Lockheed Ventura PV-1, License N5778N. On this job Blalack reported by workcard dated May 25, 1954, that he worked for 5 hours "installing cowl ring." On May 26, 1954, he reported 8 hours' work "installing cowl ring, cowl ring, magazine filters, and hydraulic windshield valve." On an unidentified date shortly after May 26, 1954, pilots of the Ohio Oil Company in company with personnel of Respondent flew this airplane on a test flight. Among those present on the flight were Assistant Service Manager Charles T. Groff, Foreman James R. Mitchell, and Electrical Foreman James Paul. On the takeoff from the field, Foreman Paul noticed that a piece of cowl covering the right engine was not securely fastened, and that it was raised about 2 inches in flight because 2 interior dzus buttons were loose. He indicated that fact to Foreman Mitchell who in turn reported it immediately to Assistant Service Manager Groff. Groff also perceived that the propeller governors were improperly adjusted. Without reference to the cowl ring, Groff instructed the pilot to land immediately to adjust the governors. Groff admitted that (except to adjust the governors) no emergency

landing would have been ordered by him unless and until the loose cowling began to vibrate. After circling the field the airplane landed, whereupon personnel of Respondent adjusted the governors and also securely fastened down the cowling. Thereupon, the test flight was resumed within half an hour. Harold R. Blalack was not present, and the incident was not timely called to his attention. At a later date Foreman Mitchell included the cowling incident in a written report to Assistant Service Manager Groff attributing the discrepancy to negligence of Harold R. Blalack for failure to securely fasten all dzus buttons on the cowling. The discrepancy was brought to the attention of Service Manager Hale and General Manager Farrell. Farrell advised that no disciplinary action be taken, and the matter was dropped without bringing it to the attention of Blalack. Thereafter, on or about June 8, 1954, additional work was performed on this airplane, and then it was released to the customer owner. Job No. 8108 in its entirety constituted the 100-hour inspection and overhaul customary in the maintenance of aircraft.

On July 15, 1954, Foreman Mitchell assigned Harold R. Blalack to work on the oxygen system of an airplane. Electrical Foreman James Paul assisted him in the work, because certain electrical installations were involved at the same time on a small panel behind the cockpit. Blalack had never before performed or been assigned to work of that precise nature. The job required the assembly of a female cup link with a male fitting having a flaired end on it to hook up with the oxygen line. Blalack admittedly knew that a particular type lubricant called oxyseal, without a petroleum base, should be used in connecting the female cup link with the male fitting to avoid the possibility of explosion when coming in contact with pure oxygen. He obtained from the toolbox of a fellow employee (Lindy Rhodes) an unlabeled box of lubricant designated to him as oxyseal, and applied it to the fittings which he assembled. In doubt that the lubricant used by him was oxyseal, he asked Foreman Paul if it was oxyseal and Paul did not know. Thereupon, Foreman Mitchell stopped in passing, and Foreman Paul exhibited the unlabeled can of lubricant and inquired what it was. Mitchell informed him in the presence of Blalack that the lubricant in question was parkerlube, and without further ado proceeded elsewhere. Thereupon, Blalack obtained from a bench nearby a can of oxyseal identified by label—then he thoroughly cleaned the parkerlube from his fittings, discarded the female cup link for a new one as a precautionary measure, reassembled the fittings, and completed his job of hooking up the oxygen line. In some unexplained manner it came to the immediate attention of Service Manager Hale that Blalack had used the wrong type lubricant, and about 1 hour later he called Foreman Mitchell to his office and inquired whether the rumor was true. Although Mitchell had made no report of the incident, and without explanation of the circumstances, he admitted to Hale that "as far as he could tell, it had been done." Without further investigation, Service Manager Hale said very briefly "Are you going to fire him, or am I?" Thereupon, Foreman Mitchell found Blalack in the welding shop and presented him with a white discharge slip without making any inspection of the job concerning which he was being fired. Blalack inquired why he was discharged, and Mitchell said, "Well, the oxygen deal this morning didn't help any. That was the reason we decided to let you go." For the first time he then mentioned the prior cowling incident and referred to the "doings" that had been going on around here. Service Manager Hale then called Blalack into his office to get his paychecks, told him that he was being discharged for his generally unsatisfactory work and a series of events including both the cowling incident and the oxyseal incident, and that he was to understand that it was not on account of his union activities. General Manager Joseph E. Farrell was absent from the plant and was not consulted with respect to the discharge.

In support of his decision to discharge Harold R. Blalack, Service Manager Jack W. Hale testified that he originally hired this employee either as an apprentice or mechanic's helper with the understanding that he had a complete course at the Embry Riddle School of Aviation and had not officially applied to the CAA for license, but that he thereafter observed his work, and reached the conclusion that he was rather slow and not too eager to get a job done; that various foremen of Respondent complained about his work, which resulted in his transfer from one work crew to another; that the cowling incident was dangerous to life and property and could have resulted in serious damages; and although Blalack was not disciplined, he still had that incident in mind. He considered it especially serious from a customer relation standpoint, because it was a good indication of having around mechanics who are not very careful, and in the aviation business that is a major sin. Ordinary care in fastening down the dzus buttons would have prevented the occurrence of the loose cowling. He thought that anyone with experience in the business for a while, who had fastened many cowlings, would fasten all the dzus buttons—then stand back, take another look, and beat on the cowling, because a loose cowling will cause fatal accidents.

He also thought that any experienced person could distinguish oxyseal from parkerlube. Parkerlube has a petroleum base, and will cause a flash explosion if it comes in contact with pure oxygen in the oxygen system of an airplane. That fact is common knowledge, and is one of the first things a person in the aviation business becomes acquainted with. The records and reports to him indicated that Blalack was negligent in failing to secure the cowling by fastening down all the dzus buttons, and Foreman Mitchell told him that Blalack made the mistake of using parkerlube instead of oxyseal in the oxygen system of an airplane. Under all the circumstances he made the decision to discharge him, and did not discharge him on account of his union activities.

Concluding Findings

Notwithstanding its avowal of neutrality, Respondent demonstrated open hostility to the organizational activities of employees. Service Manager Hale asserted in an open meeting with employees that it looked like a union would be shoved down their throats whether they wanted it or not and designated John B. McMahon as the instigator of the union activities. Assistant Service Manager Groff accused Harold R. Blalack and John B. McMahon of engaging in their activities in a sneaking manner without consulting him, and asserted that it was going to hurt a lot of people. After McMahon had voluntarily resigned his employment, both General Manager Farrell and Service Manager Hale instructed him to stay away from the premises, because he had caused enough trouble. Treasurer Schrage and Parts Manager Luciano instructed clerks in the stockroom not to sell McMahon anything at a discount because he was no longer employed there. Luciano admittedly told customers at the stockroom in the presence of employees that if he had his way, he would discharge anyone that voted for the Union. Luciano also accosted Earl F. Mick concerning the "IAM Committeeman" badge he was wearing on his coveralls, and told him to shove that badge up McMahon. Foreman Mitchell admittedly told Earl F. Mick that he would leave his job as a supervisor if the Union came in. It is obvious that the foregoing conduct of Respondent's supervisors, individually and collectively, tended to discourage membership in a labor organization and interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act. For that reason such conduct occurring as it did pending an election for the determination of a bargaining representative cannot in good faith be attributed to isolated instances or to the expression and dissemination of any views, argument, or opinion free of a threat of reprisal or force or promise of benefit contemplated and allowed by Section 8 (c) of the Act.¹

Approximately 1 week after the Union lost the election, Respondent discharged Harold R. Blalack, who had been most active in promoting the organizational activities and had acted as observer during the election on July 7, 1954. Service Manager Jack W. Hale allegedly reached his decision to discharge Blalack by reason of unsatisfactory service for more than 2 years including negligence in the installation of the engine cowling on an airplane in May 1954, and the misapplication of a lubricant on the fittings of an oxygen system on July 15, 1954. There is no evidence that Respondent had ever complained or previously notified Blalack of his alleged inefficient work. Evidence that he was negligent in failing to fasten the cowling securely is not conclusive, and in any event the Respondent withheld from him any complaint about it and took no disciplinary action at that time. In fact, when the incident had been brought to his attention by Service Manager Hale and his Assistant Service Manager Groff, General Manager Joseph E. Farrell advised his subordinate supervisors to drop the matter. In the meantime, Service Manager Hale furnished the CAA with a certificate of experience to enable Blalack to apply for an examination by the CAA, as the result of which he was issued a license as an engine mechanic in June 1954. More than a month later on July 15, 1954, Blalack from an unlabeled can applied parkerlube instead of oxyseal to fittings on which he was working in the presence of Electrical Foreman James Paul. Realizing his own mistake, Blalack made inquiry of the foreman and corrected the situation before any damage resulted. Fully advertent to this incident, Foreman Mitchell, presuming that the mistake had been corrected, took no disciplinary action and made no report until called into the office of Service Manager Hale about 1 hour later to verify a rumor received by him that the wrong type lubricant had been employed. Upon an incomplete verification of the circumstances and without further investigation, Service Manager Hale used the oxyseal incident as a pretext, and ordered that Blalack be discharged. From a preponderance of the evidence and the entire record in this case, I am con-

¹ *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793, *Graber Manufacturing Company, Inc.*, 111 NLRB 167; *Safeway Stores, Incorporated*, 110 NLRB 1718; *The DeVilbiss Company*, 102 NLRB 1317; *Century Cement Mfg. Co.*, 100 NLRB 1324, 1339.

strained to find that the discharge was ill-advised and effectuated by reason of Blalack's protected concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection. The Respondent thereby discriminated in regard to the tenure of employment of its employees to discourage membership in a labor organization.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent engaged in and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent offer immediate and full reinstatement to Harold R. Blalack to his former or substantially equivalent position² without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay resulting from the discrimination against him by paying to him a sum of money equal to the amount he would have earned from the date of his discharge to the date when a proper offer of reinstatement is made by Respondent, less his net earnings³ to be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *N. L. R. B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U. S. 344. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other such period. It will be further recommended that Respondent make available to the Board and its agents, upon request, all timecards, payrolls, and other records necessary to analyze, compute, and determine the back pay and other emoluments herein awarded.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following

CONCLUSIONS OF LAW

1. The Ohio Aviation Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. District Lodge No. 13, International Association of Machinists, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. By discriminating in regard to the hire and tenure of employment of Harold R. Blalack, thereby discouraging membership in a labor organization, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

² See: *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

³ See: *Crossett Lumber Company*, 8 NLRB 440, 497, 498.

American Radiator & Standard Sanitary Corporation, Louisville Plant, Plumbing & Heating Division and General Drivers, Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Petitioner. Case No. 9-RC-2538. November 16, 1955

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William G. Wilkerson, 114 NLRB No. 156.